
U.S. Department of Labor
Office of Administrative Law Judges
John W. McCormack Post Office and Courthouse
Boston, Massachusetts 02109

Case No.: 92-ERA-20

In the Matter of:

Michael J. Mulligan
Complainant

against

Vermont Yankee Nuclear Power Corp.
Respondent

ORDER

Complainant has filed on April 14, 1992 a Motion to Compel Respondent to file answers to Interrogatories Number 4, Number 8, Number 14 and Number 32, dealing with similarly-situated employees (No. 4 and No. 8), with Complainant's own employment history at the Respondent (No. 14) and "all persons whose licenses were revoked for the same act or reason Claimant's license was revoked between September, 1980 and the present" (No. 32). In all of the requests, the pertinent time period coincides with Complainant's employment with Respondent, September, 1980 to the present.

Respondent has filed an answer asking that the Motion to Compel should be denied because Complainant "seeks to compel responses to production of a whole fishing expedition of documents that have absolutely nothing to do with this case." Respondent also submits that certain of the interrogatories are unduly vague,

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burdensome and time-consuming, especially since documents are sought as far back as September of 1980. Moreover, Respondent also seeks "a *standard* confidentiality order that would restrict the use of documents designated 'confidential' to the present litigation" to protect the privacy rights and personal information of more than fifty (50) employees

of the Respondent referred to in Interrogatories 4, 8 and 32. Respondent also submits that Interrogatory Number 14 has been completely answered. Complainant, on the other hand, alleges that "Vermont Yankee's response to this interrogatory was only partially responsive, and completely nonresponsive to (14) (d)-(f)."

At the outset it is well to keep in mind that the mere fact that interrogatories are lengthy or that the defendant will be put to some trouble and expense in preparing requested answers is not alone sufficient to warrant a protective order relieving defendant from the burden of answering. *Klausen v. Sidney Printing & Publishing Company*, 271 F.Supp. 783 (D.C. Kan. 1967). Moreover, good cause is not established solely by showing that discovery may involve inconvenience and expense. *Isaac v. Shell Oil Company*, 83 F.R.D. 428 (D.C. Mich. 1979). Plaintiffs in equal employment cases should be permitted a very broad scope of discovery. *Morrison v. City and County of Denver*, 80 F.R.D. 289 (D.C. Colo. 1970). Interrogatories seeking answers that would tend to establish a pattern of discriminatory employment practices were proper subject of discovery in employment discrimination suit, notwithstanding that complainant brought suit only on behalf of himself. *Johnson V. W.H. Stewart Co.*, 75 F.R.D. 541 (D.C. Okla. 1976). Defendant company, in civil rights action challenging hiring and promotion policies, could be required to disclose whether different scores on tests required for promotion were required for promotion to different levels, and if so, what scores were required for each line of progression. *King v. Georgia Power Co.*, 50 F.R.D. 134 (D.C. Ga. 1970).

However, assertions that requested discovery would be both burdensome and oppressive are proper grounds for objecting to the scope of discovery. *Alexander v. Rizzo*, 50 F.R.D. 374 (D.C. Pa. 1970). Discovery is not allowed where the evidence sought would be wholly irrelevant and incompetent. *O'Brien v. Equitable Life Assur. Soc.*, 14 F.R.D. 141 (D.C. Mo. 1953). The scope of relevancy in discovery proceedings is broader than at trial. *Independent Productions Corp. v. Loew's, Inc.*, 30 F.R.D. 377, 381 (D.C. N.Y. 1962). Moreover, it is important to note that relevancy to the

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subject matter of the litigation is what must be shown and there is no requirement that the information sought be admissible at trial. Determinations on admissibility are made at trial. *Natta v. Zletz*, 405 F.2d 99, 101 (7th Cir. 1968); *Covey Oil Co. v. Continental Oil Co.*, 340 F.2d 993, 998 (10th Cir. 1965), *cert. denied*, 380 U.S. 964, 85 S. Ct. 1110 (1966); *Coca-Cola Bottling co. v. Coca-Cola Co.*, 107 F.R.D. 288, 293 (D.C. Delaware 1985). In order to guard against the possible use of genuinely confidential documents by a third party, a party ordered to produce such documents should move for a protective order. *Duplan Corp. v. Deering Milliken, Inc.*, 397 F.Supp. 1146 (D.C. S.C. 1975). Disclosure of confidential information should be made available to counsel and technical experts assisting in that particular litigation. *Melori Shoe Corp. v. Pierce & Stevens, Inc.*, 14 F.R.D. 346 (D.C. Mass. 1953). Counsel may agree on proper conditions and precautions in connection with discovery of confidential information and if they cannot

do so, the court will prescribe such conditions in a protective order. *V.D. Anderson Co. v. Helena Cotton Oil Co.*, 117 F.Supp. 932, 948-949 (D.C. Ark. 1953).

In most cases the key issue is not whether the information will be disclosed but under what conditions. The need for the information is held paramount but reasonable protective measures may be imposed to minimize the effect on the party making the disclosure. *Guerra v. Board of Trustees of California States Universities and Colleges*, 567 F.2d 352 (9th Cir. 1977). Under a protective order, names of customers are proper subject for discovery. *Chesa Intern. Ltd. v. Fashion Associates*, 425 F.Supp. 234 (D.C. N.Y. 1977).

Most noteworthy are the comments of Judge John W. Oliver in *Apco Oil Corp. v. Certified Transp., Inc.*, 46 F.R.D. 428, 431 (D.C. Mo. 1969):

> Experience has further established that counsel of the competence of counsel engaged in this case rarely find it necessary to resort to motions for protective orders because both sides recognize that the question presented is not whether documentary data is going to be ordered produced, but when, how, and in what form, such production will be ordered.

In view of the foregoing, it is the judgment of this Administrative Law Judge that the almost twelve-year period of time

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encompassed by Complainant's Interrogatories is unduly broad, burdensome and oppressive and that the pertinent area of inquiry herein shall commence on January 1, 1982. I select this date based on Complainant's Amended Complaint wherein he alleges that he was making internal safety complaints in 1982. I also note that Respondent, in its Pre-Hearing Report, intends to call Gil Johnson as a witness and that Mr. Johnson allegedly will testify that Complainant's job performance was "poor" as far back as 1985.

I have reviewed the pertinent portions of the Interrogatories referred to by counsel in their respective pleadings and it is my further judgment that the personal privacy of the employees of Respondent who are encompassed by Interrogatories 4, 8 and 32 should be respected, however, keeping in mind Complainant's right to a full trial on the allegations he has made against Respondent. With reference to Interrogatories 4, 8 and 32, I am not yet prepared to give a blanket exemption of confidentiality to all information about Respondent's employees who were and/or are similarly-situated with the Complainant as there are various ways by which the employees' names, for example, might be disclosed, while protecting information such as test scores, employment action, *etc.*

I would also like to make clear that the information sought by Interrogatories 4, 8 and 32, commencing on January 1, 1982, is relevant and is reasonably calculated to lead to the discovery of admissible evidence herein, especially given the gravamen of the

charges levied by Complainant. In so concluding, I make no determination on the merits of the complaint filed by Mr. Mulligan. I make these rulings solely in the context of this Motion to Compel and Respondent's answer thereto.

Moreover, the information sought by Interrogatory 14 is also relevant herein and the alleged partial responses should be completed by Respondent, as well as filing complete responses to Interrogatory 14 (d)-(f).

Complainant also requests an order relating to his filing of a request for document production, which was attached to the Interrogatories. Complainant alleges "that the bulk of the requested documents were being withheld, pending signature of the confidentiality order. " Apparently some documents have been produced in redacted form.

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Respondent answers that "Vermont Yankee had already provided Complainant with *all* the documents relevant to the hearing."

Respondent's counsel has faxed to my law clerk, Attorney Alicia M. Caterino, a copy of a document entitled Stipulation of Confidentiality, and apparently this document has been sent to counsel for Complainant.

I have reviewed the document and I conclude that this document should be the starting point for further discussions between the parties as to how best and to what extent to safeguard the personal privacy rights of Respondent's other employees encompassed in Interrogatories 4, 8, 14 and 32.

As the trial will begin on April 30, 1992 and in view of the short time span remaining, Respondent (1) shall complete its answers to the Interrogatories and (2) shall comply with Complainant's Request for Production of Documents. The completed answers and the documents shall be brought to the courtroom on April 30, 1992 if counsel are not able to agree upon the terms of an appropriate protective order for my signature. In the latter event, I shall entertain at the hearing Respondent's Motion for a Protective Order and a ruling will be made at that time. **Furthermore, in view of the now-anticipated length of the trial, based on the witness lists filed by the parties, the parties are advised that the hearings will be continuous and that further testimony will be taken on May 1, 1992, as well as on May 4, 1992 and continuing thereafter for as long as necessary during that week. The hearing room has already been reserved for that purpose.**

DAVID W. DI NARDI
Administrative Law Judge

Dated: APR 17 1992

Boston, Massachusetts

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